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Nos. 79-1738, 80-945

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

RICHARD NIXON,

Petitioner,

v.

A. ERNEST FITZGERALD,

Respondent.

BRYCE N. HARLOW
AND
ALEXANDER P. BUTTERFIELD,

Petitioners,

v.

A. ERNEST FITZGERALD,

Respondent.

PETITIONER NIXON'S RESPONSE TO MOTION OF JUDITH CLARK, DANA BIBERMAN, NATALEE ROSENSTEIN, EVE ROSAHN AND JANE SPIELMAN TO INTERVENE AND FOR OTHER RELIEF

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The plaintiffs in *Clark v. United States*, 78 Civ. 2244 (S.D.N.Y.), have followed the Halperins in moving for leave to intervene and for dismissal of the writ as im-

providently granted. The motion consists primarily of an extended diatribe against former President Nixon, his government counsel in the *Clark* suit, and his private counsel in this action. However, the *Clark* plaintiffs' immediate complaint appears to concern District Judge Morris Lasker, the United States Court of Appeals for the Second Circuit and this Court, whose actions are said to have unjustly delayed proceedings, particularly discovery, in the *Clark* case.[1] This Court is singled out as having "allowed Nixon to continue to circumvent the law and use the federal courts for his own purposes" and "given new life to Nixon's use of the courts to avoid litigation." Motion, p. 2.

In Petitioner Nixon's Response to the Halperins' Motion to Intervene and for Other Relief (filed herein August 24, 1981), we discussed the reasons why the Nixon-Fitzgerald limitation-of-liability agreement does not affect the propriety of this Court's consideration of the issue of absolute Presidential immunity and why litigants whose only interest in a case is with the possible application of a ruling of law to their case are not thereby entitled to intervene. That discussion is dispositive of the *Clark* plaintiffs' motion as well and will not be repeated here.

Quite apart from its lack of merit, the motion exemplifies the litigation realities which make recognition of absolute Presidential immunity so important. Its

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[1] Even this aspect of the motion is inaccurate. In the district court, the *Clark* plaintiffs have never been prevented from taking full discovery against most of the named defendants. Only Mr. Nixon and the defendants in criminal proceedings listed in the motion have been off limits to deposition discovery. The *Clark* plaintiffs' failure to take a single deposition under these circumstances is hardly attributable to Mr. Nixon.

intemperate allegations, including charges of "deliberate fraud" levelled at members of the Bar of this Court, are as easily made in a complaint as in a motion. Absent a threshold defense like absolute immunity, such allegations trigger an expensive, time-consuming and burdensome process of litigation. Indeed, the *Clark* plaintiffs' eagerness for unbounded discovery in their case is manifest, and the litigation they contemplate would obviously be burdensome in the extreme. Their central allegation is that "hundreds of government officials were involved in the authorization, effectuation and subsequent cover-up of the acts committed against the *Clark* plaintiffs." Motion, p. 3. Denial of absolute Presidential immunity would truly be "a signal to the sitting President and other high government officials that they may [not] proceed with any action . . . without fear of civil litigation" of the sort the *Clark* plaintiffs envision. Motion, p. 9.

CONCLUSION

The Motion of Judith Clark, Dana Biberman, Natalee Rosenstein, Eve Rosahn and Jane Spielman to Intervene and for Other Relief should be denied.

Respectfully submitted,

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